

Message Text

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PAGE 01 THE HA 01404 261512 Z

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FM AMEMBASSY THE HAGUE

TO SECSTATE WASHDC PRIORITY 970

UNCLAS THE HAGUE 1404

FOR L, AMBASSADOR KEARNEY FROM CAVERS

E. O. 11652: N/ A

TAGS: PFOR, US, HCPIL

SUBJECT: HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW/
CONVENTION ON LAW APPLICABLE TO MAINTENANCE

1. CONVENTION CHANGED CONSIDERABLY FROM 1972 VERSION.
SECRETARY GENERAL INSISTED PRESERVING MINORS CONVENTION
WITHOUT SUBSTANTIVE CHANGE EXCEPT FOR UNIVERSALIZATION.
THUS ITS ARTICLE 3 NOW APPLIES ONLY TO LEX FORI.
CONVENTION COVERS ALL KINDS DEPENDENTS BUT DEBTOR CAN
INVOKE COMMON NATIONAL LAW OR, IF NONE, HIS RESIDENCE
LAW TO ESCAPE MAINTAINING COLLATERALS AND INLAWS.
MOREOVER, ARTICLE 2 OF MINORS CONVENTION IS EXTENDED TO
ADULTS, BUT MAY BE MADE A RESERVATION.

2. LAW OF RESIDENCE OF MINOR AND ADULT CREDITORS GOVERNS
MAINTENANCE BUT CREDITOR, IF UNABLE COLLECT IN PARTICULAR
CASE, CAN INVOKE COMMON NATIONAL LAW. APPLICABLE LAW
CHANGES WHEN CREDITOR CHANGES RESIDENCE. MAINTENANCE
AFTER DIVORCE AND SEPARATION GOVERNED BY LAW APPLIED BY
DIVORCE FORUM WHICH ALSO GOVERNS DECREE REVISION.
CONVENTION EXCLUDES COVERAGE OF CON-
TRACTS. " SUBSTANTIVE PROVISION" REFLECTING PARTIES'
NEEDS AND RESOURCES PRESERVED. SUBROGATION LIMITED TO
PUBLIC BODIES. CONVENTION SILENT ON INCIDENTAL QUESTION.

3. EFFORT STRONGLY SECONDED BY IRELAND TO GET DIVISIBLE
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PAGE 02 THE HA 01404 261512 Z

DIVORCE AMENDMENT DEFEATED NINE TO NINE. LATER TRY FOR MODIFIED RESERVATION DEFEATED FOUR TO SIX. SECRETARY GENERAL SYMPATHETIC. HOPEFUL THAT NEW TRY WITH BROADER BUT SIMPLIFIED PROVISION WILL WORK. IRELAND WON' T RATIFY IF DEFEATED.

4. RESERVATIONS PERMIT LIMITING CONVENTION TO MINORS OR TO MINORS AND SPOUSES AND EX- SPOUSES. NATURALLY RESERVATION' S VALUE IN UNIVERSALIST CONVENTION IS LIMITED.

5. IN VIEW IMPORTANCE OF COMMON NATIONAL LAW, HAVE DRAFTED PROVISION GIVING US BENEFIT OF THIS CONCEPT, INSERTED IN FEDERAL- STATE CLAUSE BASED ON ARTICLE 28 ENFORCEMENT CONVENTION. FAIR CHANCE OF ACCEPTANCE. HAVE ALSO ADAPTED ARTICLE 13 PRODUCTS LIABILITY CONVENTION.

6. WILL CABLE FATE OF DIVISIBLE DIVORCE RESERVATION AND COMMON NATIONALITY CLAUSE. IF BOTH DEFEATED SUGGEST WE EITHER ABSTAIN FROM SIGNING OR SIGN WITH STATEMENT THAT OUR SIGNING MADE POSSIBLE BY RESERVATION LIMITING CONVENTION TO MINORS. CONVENTION GIVES ADULTS MUCH LEEWAY FOR OFFENSIVE AND DEFENSIVE FORUM- SHOPPING.
MIDDENDORF

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